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**Comptroller General  
of the United States**

**United States General Accounting Office  
Washington, DC 20548**

## Decision

**Matter of:** Yoosung T&S, Ltd.

**File:** B-291407

**Date:** November 15, 2002

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Byoung Kook Min, First Law Offices of Korea, for the protester.  
Lt. Col. Thomas Hong and Maj. David T. Crawford, Department of the Army, for the agency.  
Tania Calhoun, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### **DIGEST**

Protest that contracting agency improperly evaluated protester's proposal as technically unacceptable is denied where the record shows the evaluation was reasonable and consistent with the solicitation's evaluation criteria; protester is not an interested party to challenge the agency's nonresponsibility determination since it would not be in line for award even if its protest were sustained.

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### **DECISION**

Yoosung T&S, Ltd. protests the award of a contract to Hanjin Transportation under request for proposals (RFP) No. DAJB03-02-R-0104, issued by the U.S. Army Contracting Command Korea to obtain general cargo and explosive truck services for the United States Forces Korea. Yoosung argues that the Army improperly found its proposal technically unacceptable and improperly determined that it was not a responsible prospective contractor.

We deny the protest.

The RFP anticipated the award of a fixed-price requirements contract to obtain transportation services for the movement of general cargo and/or explosives originating within various Army movement control teams to any point in Korea. The Army currently acquires these services under two separate contracts, one of which is held by Yoosung; this RFP combines the requirements of both contracts.

Award was to be made to the responsible offeror submitting the lowest-priced, technically acceptable offer that satisfied all of the solicitation's terms and

conditions. RFP at 98. To be considered technically acceptable, offerors were to submit technical proposals addressing four technical factors—quality control plan/safety plan, past performance, management capability/staffing, and equipment vehicle list/insurance liability—in sufficient detail to demonstrate their full understanding of the requirements. Id. at 96-98.

The Army received proposals from 10 firms. The requiring activity evaluated the proposals and found that Hanjin's was the only one that was technically acceptable. Yoosung's proposal was found technically unacceptable under three of the four technical factors and technically unacceptable overall. The contracting officer nonetheless asked the requiring activity's quality assurance branch (QAB) to conduct preaward surveys of the five lowest-priced offerors, including Hanjin and Yoosung.<sup>1</sup>

The QAB found Yoosung's technical knowledge unsatisfactory because it failed to demonstrate an understanding of acceptable practices and procedures, particularly those associated with safety requirements concerning ammunition, explosives, and related dangerous material. The QAB also found Yoosung's production capability unsatisfactory because its project manager failed to demonstrate adequate knowledge in the area of general and hazardous material transportation; the firm failed to demonstrate its ability to provide adequate vehicle resources; and the firm's proposed safety plan and quality control objectives failed to address specific safety issues concerning ammunition transportation. The QAB concluded that the performance risks were very high and recommended that award not be made to Yoosung. Based upon the preaward survey results, the contracting officer found that the only offeror to whom award could be made was Hanjin. The contracting officer found Yoosung to be nonresponsible for the reasons identified by the QAB and notified Yoosung of this finding on September 16.

On September 23, Yoosung filed identical protests with the agency and this Office in which it argued that the Army's nonresponsibility determination lacked a sufficient basis and was not made in good faith. Citing differences between its and Hanjin's pricing for certain line items, Yoosung also asserted that Hanjin's pricing was unbalanced. Finally, Yoosung requested the results of the technical evaluation. On September 28, the Army denied Yoosung's protest, advising the firm of the technical evaluation results and restating the basis for its nonresponsibility determination.

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<sup>1</sup> It is not clear why the contracting officer requested a preaward survey or made a responsibility determination with respect to Yoosung. Responsibility determinations are to be made with regard to "prospective contractors," Federal Acquisition Regulation (FAR) Subpart 9.1, and Yoosung's submission of a technically unacceptable proposal meant that it was not a "prospective contractor" here.

Yoosung first argues that the Army improperly found its proposal technically unacceptable, contending that its proposal contained sufficient information to meet the solicitation's requirements.<sup>2</sup>

The evaluation of technical proposals is primarily the responsibility of the contracting agency. SDS Int'l, Inc., B-279361 et al., June 8, 1998, 98-2 CPD ¶ 7 at 3. In reviewing an agency's technical evaluation, we will not reevaluate the proposals; we will only consider whether the agency's evaluation was reasonable and consistent with the solicitation's evaluation criteria and with all applicable procurement statutes and regulations. Herndon Science and Software, Inc., B-245505, Jan. 9, 1992, 92-1 CPD ¶ 46 at 3. A protester's disagreement with the agency's judgment is not sufficient to establish that the agency acted unreasonably. Id. As the following examples indicate, Yoosung has given us no basis to question the reasonableness of the agency's evaluation.

Under the RFP's quality control/safety plan factor, offerors were required to establish, implement, and maintain a complete quality control plan. Each quality control plan was required to specify how to correct a deficiency; to provide a source of qualified vehicle maintenance and safe operation; to provide a preventive accident plan; and to provide a performance plan. RFP at 96. The Army evaluated Yoosung's proposal as technically unacceptable because it did not include a plan to correct deficiencies, a preventive accident plan, or a performance plan. Yoosung argues that it assigned the quality control duties to an individual who is a certified quality controller, and that it has been maintaining its own automobile repair center to keep the vehicles in good operating condition during performance of its prior contract. Protester's Comments at 4. These arguments do not address the Army's concerns that Yoosung's proposal failed to meet the solicitation's requirements, and we have no basis to find the agency's evaluation unreasonable.

Likewise, under the management capability/staffing factor, offerors were required to name a project manager with experience in operations involving the movement of trucking services who must have the ability to speak, read, write, and converse in English. Offerors were also required to provide an organizational structure and a

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<sup>2</sup> The Army asserts that GAO lacks jurisdiction to hear the protest because the procurement is being funded by the Republic of Korea and not with appropriated funds, citing 4 C.F.R. § 21.5(g) (2002), which provides that GAO shall dismiss a protest of a procurement by agencies other than federal agencies. Our Office decides bid protests concerning alleged violations of the procurement statutes and regulations by federal agencies, 31 U.S.C. § 3552 (2000), and we have held that this authority is based on whether the procurement is conducted by a federal agency and is not dependent upon whether appropriated funds are involved. Artisan Builders, B- 220804, Jan. 24, 1986, 86-1 CPD ¶ 85 at 2. The record shows that this procurement was conducted by the Army, a federal agency; we therefore have jurisdiction to hear the protest.

training plan. RFP at 97-98. The Army evaluated Yoosung's proposal as technically unacceptable because it did not address its proposed project manager's English capabilities, and because it did not provide a training plan. Yoosung, which concedes that its project manager and his assistants "are not very fluent in [the] English language," Protest at 2, argues that its project manager has been working on contracts such as these for more than 25 years and that it has never experienced any management and staffing problems. Again, these arguments do not address the Army's concerns that Yoosung's proposal failed to meet the solicitation's requirements, and we have no basis to find the agency's evaluation unreasonable.

Since we find that the Army reasonably evaluated Yoosung's proposal as technically unacceptable, we need not address its arguments that the Army improperly found it nonresponsible. In order to maintain a protest in our Office, a firm must be an interested party, that is, an actual or prospective bidder or offeror whose direct economic interest will be affected by the award of or failure to award a contract. 4 C.F.R. § 21.0(a). A protester is not an interested party where it would not be in line for award were its protest to be sustained. Green Shop, Inc., B-278125, Dec. 1, 1997, 97-2 CPD ¶ 154 at 2. Yoosung is ineligible for award because the Army reasonably found its proposal technically unacceptable. Even if the Army were to determine that Yoosung was a responsible prospective contractor, Hanjin, which submitted the only technically acceptable offer,<sup>3</sup> would still be in line for award.

The protest is denied.

Anthony H. Gamboa  
General Counsel

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<sup>3</sup> With respect to Yoosung's allegation that Hanjin submitted unbalanced pricing, the Army's report pointed out that a comparison between the prices of Yoosung and Hanjin was not evidence of unbalanced pricing. The Army further noted that unbalanced pricing is permitted as long as the contracting officer does not find an unacceptable risk to the government, FAR § 15.404-1(g)(2), and that the contracting officer found that any variations in pricing here were acceptable. Yoosung's comment that the evidence "speaks for itself," Protester's Comments at 2, does not rebut the agency's position and we deem this allegation to have been abandoned. Datum Timing, Div. of Datum Inc., B-254493, Dec. 17, 1993, 93-2 CPD ¶ 328 at 5.